

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY
 James H. Hanson, Pro Hac Vice, Ind. Bar No. 08100-49
jhanson@scopelitis.com
 Robert L. Browning, Pro Hac Vice, Ind. Bar No. 15128-49
rbrowning@scopelitis.com
 R. Jay Taylor Jr., Pro Hac Vice, Ind. Bar No. 19693-53
jtaylor@scopelitis.com
 10 West Market Street, Suite 1500
 Indianapolis, IN 46204
 (317) 637-1777
 Fax: (317) 687-2414

Christopher C. McNatt, Jr., Cal. Bar No. 174559
cmcnatt@scopelitis.com
 2 North Lake Avenue, Suite 460
 Pasadena, CA 91101
 (626) 795-4700
 Fax: (626) 795-4790

Attorneys for Diakon Logistics (Delaware) Inc.

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

JOSUE SOTO, GHAZI RASHID, MOHAMED)
 ABDELFAH, on behalf of All Aggrieved)
 Individuals, All Others Similarly Situated, and)
 the General Public,)

Plaintiffs and
 Counterclaim Defendant,)

vs.)

DIAKON LOGISTICS (DELAWARE) INC., a)
 foreign corporation;)

Defendant and
 Counterclaimant,)

and)
 DOES 1 through 50, inclusive,)
 Defendants.)

DIAKON LOGISTICS (DELAWARE) INC.,)
 Third-Party Plaintiff,)

vs.)

SAYBE'S, LLC, ABDUL TRUCKING, INC.,)
 and RASHID TRUCKING, INC.)

Third-Party Defendant.)

CASE NO. 08-CV-0033-L-AJB

CLASS ACTION

**FIRST AMENDED THIRD-PARTY
 COMPLAINT OF DIAKON
 LOGISTICS (DELAWARE) INC.
 AGAINST SAYBE'S, LLC, ABDUL
 TRUCKING, INC., AND RASHID
 TRUCKING, INC.**

Defendant/Counterclaimant/Third-Party Plaintiff, Diakon Logistics (Delaware) Inc.
 ("Diakon"), by counsel, pursuant to Fed.R.Civ.P. 14(a) and for its Third-Party Complaint against
 Third-Party Defendants, Saybe's, LLC ("Saybes"), Abdul Trucking, Inc., ("Abdul Trucking"),
 and Rashid Trucking, Inc. ("Rashid Trucking"), states as follows:

Parties

1
2 1. Diakon is, and at all relevant times was, incorporated under the laws of Delaware
3 with its principal place of business located in Virginia, and is accordingly a citizen of both
4 Delaware and Virginia pursuant to 28 U.S.C. § 1332(c). Diakon is a national warehousing,
5 logistics, and home delivery service provider serving various retailers in California. Diakon
6 utilizes the services of independent contractor transportation service providers such as Abdul
7 Trucking and Rashid Trucking to facilitate the delivery of merchandise for Diakon's customers.

8 2. Saybe's is a California limited liability company believed to have its principal
9 place of business located in California. It is registered with the California Secretary of State's
10 office as LLC No. 200515810293. Saybe's is believed to be owned entirely by Plaintiff, Josue
11 Soto ("Soto").

12 3. Abdul Trucking, a California corporation incorporated on September 24, 2004, is
13 believed to have its principal place of business located in California. It is registered with the
14 California Secretary of State's office as Corporation No. C2675803. Abdul Trucking is believed
15 to be owned entirely by Plaintiff, Mohamed Abdel-Fattah ("Abdel-Fattah").

16 4. Rashid Trucking, a California corporation incorporated on July 8, 2005, is
17 believed to have its principal place of business located in California. It is registered with the
18 California Secretary of State's office as Corporation No. C2755777. Rashid Trucking is
19 believed to be owned entirely by Plaintiff, Ghazi Rashid ("Rashid").

Jurisdiction And Venue

20
21 5. This Court has supplemental jurisdiction over the claims asserted in the Third-
22 Party Complaint under 28 U.S.C. § 1367(a) because the claims asserted in the Third-Party
23 Complaint are so related to the claims asserted in Plaintiffs' Complaint that they form a part of
24 the same case and controversy under Article III of the United States Constitution.

25 6. This Court also has jurisdiction over the claims asserted in the Third-Party
26 Complaint under 28 U.S.C. § 1332 because the amount in controversy, on information and
27 belief, exceeds \$75,000, and because the claims are between citizens of different states.

28 7. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a).

Facts

8. Saybe's and Diakon entered into Service Agreements ("SAs") on or about November 2, 2005 (the "2005 Saybe's SA"), and November 2, 2006 (the "2006 Saybe's SA"). In its SAs, Saybe's agreed, among other things, to transport items for Diakon's customers as an independent contractor. Copies of Saybe's SAs are attached hereto as *Exhibits A* and *B* respectively.

9. Saybe's employed Soto to carry out its obligations under its SAs.

10. Abdul Trucking and Diakon entered into Service Agreements ("SAs") on or about October 13, 2004 (the "2004 Abdul SA"), October 9, 2005 (the "2005 Abdul SA"), and July 31, 2006 (the "2006 Abdul SA"). In its SAs, Abdul Trucking agreed, among other things, to transport items for Diakon's customers as an independent contractor. Copies of Abdul Trucking's SAs are attached hereto as *Exhibits C, D, and E*, respectively.

11. Abdul Trucking employed Abdel-Fattah to carry out its obligations under its SAs.

12. Rashid Trucking and Diakon entered into SAs on or about July 15, 2005 (the "2005 Rashid SA"), and May 26, 2006 (the "2006 Rashid SA"). In its SAs, Rashid Trucking agreed, among other things, to transport items for Diakon's customers as an independent contractor. Copies of Rashid Trucking's SAs are attached hereto as *Exhibits F* and *G*, respectively.

13. Rashid Trucking employed Rashid to carry out its obligations under its SAs.

14. The 2005 Saybe's SA, the 2004 Abdul SA, the 2005 Abdul SA, and the 2005 Rashid SA provide that Saybe's, Abdul Trucking and Rashid Trucking, respectively, will

indemnify [Diakon] harmless from any and all claims, losses, liabilities, costs and expenses of any kind whatsoever, including, without limitation, attorneys' fees (all of the foregoing being collectively referred to as "Indemnified Amounts") incurred by or asserted against [Diakon] and arising out of, or resulting from, in whole or in part, the Contractor's [Abdul Trucking or Rashid Trucking] performance including, without limitation, Indemnified Amounts arising out of, or resulting from, in whole or in part, the Contractor's performance of the services arising out of or relating to this agreement

Exhibits A, § 6; *C*, § 6; *D*, § 6; and *F*, § 6. The 2006 Saybe's SA, the 2006 Abdul SA, and the 2006 Rashid SA have virtually identical provisions. *See Exhibits B*, § 6; *E*, § 6; *G*, § 6.

1 15. Each of the SAs of Saybe's, Abdul Trucking, and Rashid Trucking further
2 provide that Saybe's, Abdul Trucking and Rashid Trucking, respectively, will

3 pay to [Diakon], on demand, any and all amounts necessary to indemnify
4 [Diakon] from and against all such Indemnified Amounts incurred by or
5 asserted against [Diakon], and [Diakon] shall have the right to set-off any
6 such Indemnified Amounts against any amounts owed by [Diakon] to the
7 Contractor [Abdul Trucking or Rashid Trucking] under this Agreement.

8 *See Exhibits A, § 6; B, § 6; C, § 6; D, § 6; E, § 6; F, § 6; and G, § 6.*

9 16. Soto, Abdel-Fattah, and Rashid allege in the Complaint that they and members of
10 a putative class of similarly situated transportation service providers are entitled to compensatory
11 damages, injunctive relief, restitution, disgorgement of profits, and civil penalties by virtue of
12 Diakon's alleged misclassification of them as independent contractors.

13 **Cause of Action for Indemnity**

14 17. Diakon realleges and reincorporates herein by reference the allegations of
15 paragraphs 1 through 16 above as though set forth fully herein.

16 18. Some of the claims Soto, Abdel-Fattah, and Rashid assert in this case and the
17 expenses Diakon has incurred to defend against them arise out of and result from the
18 performance of Saybe's, Abdul Trucking, and Rashid Trucking under their respective SAs.

19 19. Pursuant to their respective SAs, Saybe's, Abdul Trucking, and Rashid Trucking
20 must indemnify Diakon from and against any and all claims, liabilities, losses, costs, and
21 expenses, including but not limited to reasonable attorneys' fees and costs, resulting from or
22 arising out of the claims asserted by Soto, Abdel-Fattah, and Rashid in this case that arise out of
23 and result from the performance of Saybe's, Abdul Trucking, and Rashid Trucking under their
24 respective SAs.

25 WHEREFORE, Diakon requests an award against Saybe's, Abdul Trucking, and Rashid
26 Trucking in an amount sufficient to fully and completely indemnify Diakon from and against any
27 and all claims, liabilities, losses, costs, and expenses, including but not limited to reasonable
28 attorneys' fees and costs, resulting from or arising out of the claims asserted by Soto, Abdel-
Fattah, and Rashid in this case that arise out of and result from the performance of Saybe's,

1 Abdul Trucking, and Rashid Trucking under their respective SAs, and any other relief this Court
2 deems equitable and just.

3 **DEMAND FOR JURY TRIAL**

4 Diakon demands a trial by jury of all claims as to which it is entitled to a jury trial.

5
6 Respectfully submitted,

7 /s/James H. Hanson

8 James H. Hanson

9 Attorney for Defendant/Counterclaimant/
10 Third-Party Plaintiff, Diakon Logistics
11 (Delaware) Inc.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically this 6th day of June, 2008. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Derek J. Emge
Derek@inthelaw.com
Emge & Associates

David A. Huch
dhuch@onebox.com
Law Offices of David A. Huch

Todd J. Hilts
Hilts911@aol.com
Law Office of Todd J. Hilts

Issa J. Michael
imichaelsq@yahoo.com
The Michael Law Firm

/s/James H Hanson

James H. Hanson

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EXHIBITS

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